

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WQO 2003-0010

In the Matter of the Petition of

**COUNTY OF SACRAMENTO,
SANITATION DISTRICT NO. 1**

For Review of Waste Discharge Requirements Order No. R5-2003-0084

Walnut Grove Wastewater Treatment Facility

Issued by the

California Regional Water Quality Control Board,
Central Valley Region

SWRCB/OCC FILE A-1576

BY THE BOARD:

The Central Valley Regional Water Quality Control Board (Regional Board) issued waste discharge requirements to the County of Sacramento, Sanitation District No. 1 (County) for the operation of its Walnut Grove Wastewater Treatment Plant (Plant). The waste discharge requirements, Order No. R5-2003-0084 (Permit), regulate the discharge from the plant into an unnamed, man-made ditch from which the wastewater is pumped into Snodgrass Slough during the winter months. The County has filed a timely petition contesting several aspects of those requirements and asking that four specific portions of the Permit be stayed pending the State Water Resources Control Board's (State Board) resolution of the petition on its merits.

The four items for which the stay is requested are:

1. The requirement to monitor flow at two locations in the unnamed ditch (Monitoring and Reporting Program at page 49);
2. The requirement to collect receiving water samples at two locations in Snodgrass Slough (Monitoring and Reporting Program at page 49);
3. The interim effluent limitation for chlorine residual discharge to the unnamed ditch (Effluent Limitations for Discharge to Ditch, provision B.2.); and

4. The receiving water limitation for dissolved oxygen equal to 5 milligrams per liter (mg/l) (Receiving Water Limitations, provision E.1).

For the reasons discussed below, the Request for Stay is denied.

I. BACKGROUND

The Walnut Grove Plant serves a small community in southern Sacramento County. The design capacity for the Plant is 0.5 million gallons per day (mgd) monthly average dry weather flow. The Plant also has a daily peak wet weather design flow of 0.86 mgd. During dry weather, the Plant disposes of its treated effluent through evaporation and percolation. During the winter months, the effluent goes into the unnamed ditch. Much of the effluent is pumped out of the ditch and into Snodgrass Slough, which is tributary to the Sacramento, Mokelumne, and San Joaquin Rivers. In previous permits for the Plant, compliance was measured at the point of discharge to the Slough. In the Permit, the Regional Board determined that the ditch has beneficial uses that need to be protected, as well the Slough. Thus, the Permit imposes new conditions on the County involving protection of the ditch.

The County has indicated to both the State and Regional Boards that they are considering alternatives to continued operation of the Plant. The Regional Board did make some adjustments to the draft Permit to reflect the possible discontinuation of the discharge, but it did not agree to all the changes requested by the County. The Request for Stay relates to items that the Regional Board left unchanged in the adopted Permit. This order addresses only the stay request and does not make any determination as to the merits of the petition.

To qualify for a stay, a petitioner must allege facts and produce proof of three things:

1. Substantial harm to the Petitioners or to the public interest if a stay is not granted;
2. A lack of substantial harm to other interested persons and to the public interest if a stay is granted; and
3. Substantial questions of law and fact regarding the disputed action.

(Cal. Code Regs., tit. 23, § 2053.)

The County presented sufficient information in support of its request to justify holding a hearing. A notice of the hearing was sent to the parties on August 5, 2003. Each party

submitted timely information to the State Board in support of its position on the Request for Stay. A hearing was held before Peter S. Silva, Vice Chair of the State Board, sitting as hearing officer by appointment of the Chair, on August 20, 2003 in the State Board's offices.¹

II. CONTENTIONS AND FINDINGS

1. Contention: The County contends that it will suffer substantial harm if a stay is not granted. The County asserts that it will have to expend significant amounts of money to comply with the four requirements before the deadlines imposed by the Regional Board.

Finding: The County failed to present a convincing case that it will suffer significant harm if a stay is not granted. The County has offered in evidence cost estimates that indicate expenses of several hundred thousand dollars for flow monitoring in the ditch, for disinfection systems, and for an aeration system to meet the dissolved oxygen requirement. (The County also indicates it will cost about \$1,000 a month to do the required monitoring in Snodgrass Slough. The latter cost will not result in substantial harm to the County.) With regard to the larger estimated costs, the Assistant Executive Officer of the Regional Board testified that the County was not expected to incur those kinds of costs to comply with the challenged Permit requirements. He stated that much less costly alternatives would suffice and that the Regional Board staff was prepared to discuss such alternatives with the County to assure that no public funds were wasted. The State Board agrees that the costs estimated by the County are not consistent with the requirements in the Permit. The requirements for flow monitoring, disinfection, and aeration in the ditch can be complied with for significantly lower cost than the equipment and methods the County testified it would employ.

In addition, the timelines provided by the County indicate that virtually no work on the projects will take place from November 1 through May of next year. While there may be reasons to go ahead and spend the planning money on these projects now, it is certainly feasible to wait until after the State Board resolves the petition on its merits early next year before committing any significant amounts of money to the projects. The evidence shows that the County need not move ahead immediately in order to comply with the Regional Board's

¹ Because this order is issued by a single State Board member sitting by appointment of the Chair, this order will not be considered precedential by the State Board.

schedule, even if it intends to build facilities more complex and expensive than the Regional Board intends.

Finally, based on the testimony by the County's representatives, it is not at all clear that the County will abandon this discharge. Therefore, the contention that the money spent to comply with the permit provisions would be wasted is in question. The County claimed that substantial harm is proved if the actions are required prior to State Board resolution of the petition. The State Board disagrees with that claim. Resolution of a stay request depends on the facts in the specific case. Exorbitant costs for a short term solution might, under some circumstances, constitute substantial harm. That has not been shown here.

The State Board will not grant a stay merely because the party requesting it must incur some expense, even a substantial one. Most stay requests are dismissed by the Executive Director if that is the only basis for a claim of substantial harm. In a recent case involving the Pacific Lumber Company (Order WQ 2001-09), the State Board considered a claim that sales delays caused by monitoring requirements justified a stay. In response the State Board held: "Petitioners will incur additional costs due to the delay in logging and the delay in petitioners' profit from timber sales and lumber production from the land in question. However, petitioners have not demonstrated that the costs of compliance with the Regional Board order are disproportionate to the benefit to be gained by the required water quality monitoring."

2. Contention: The County contends that no substantial harm will result to others or to the public interest if a stay is issued.

Finding: The County makes a good case that a delay in imposing any of these requirements until after the State Board has resolved the merits of the petition will cause little, if any, harm to anyone. In light of the fact that the discharge has continued basically unchanged for many years, the evidence supports the conclusion that there will be no substantial harm if the contested requirements were not implemented for several months. The Regional Board argues that one delay will beget another delay and that the County has already been given considerable time to comply. This position does not support a finding that there will be substantial harm if a stay is issued. However, in light of the finding on the previous contention, the fact that the County has proved this contention cannot support issuance of a stay.

3. Contention: The County contends that it has raised substantial issues of law and fact in its petition.

Finding: Without in any way commenting on the merits, it does appear that some of the contentions in the petition may be substantial. However, in light of the finding above, the fact that the County has supported this contention does not matter.

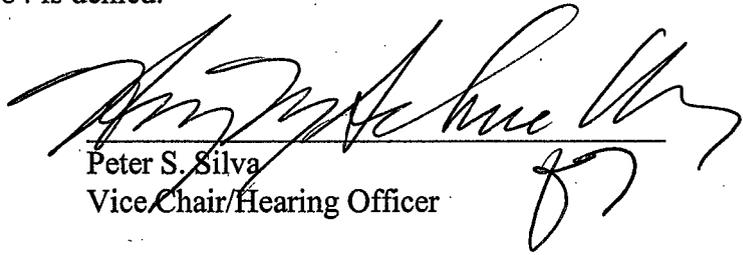
III. SUMMARY AND CONCLUSIONS

To justify a stay of a Regional Board action, the Petitioner must meet all three requirements of our regulations. In this case, the County did not prove that it would suffer substantial harm if a stay were not granted. Therefore, it is not entitled to a stay.

IV. ORDER

IT IS HEREBY ORDERED that the requested stay of Waste Discharge Requirements No. R5-2003-0084 is denied.

Date: AUG 22 2003


Peter S. Silva
Vice Chair/Hearing Officer